

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

58
FOR MR. JUSTICE ROBE.

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1922.

No. 3758.

852

WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC
RAILROAD COMPANY, APPELLANT,

vs.

FRED BROOKS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED DECEMBER 20, 1921.

PRINTED FEBRUARY 17, 1922.

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Nov. 8.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1922.

No. 3758.

THE WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC
RAILROAD COMPANY, A CORPORATION, APPELLANT,

vs.

FRED BROOKS, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3758

WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC RAILROAD COMPANY, Appellant,

vs.

FRED BROOKS.

a Supreme Court of the District of Columbia.

At Law.

No. 60828.

FRED BROOKS, Plaintiff,

vs.

THE WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC RAILWAY COMPANY, a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in-said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Declaration.*

Filed November 17, 1917.

In the Supreme Court of the District of Columbia.

At Law.

No. 60828.

FRED BROOKS, Plaintiff,

vs.

THE WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC RAILWAY COMPANY, a Corporation, Defendant.

The plaintiff, Fred Brooks, sues the defendant, The Washington, Baltimore & Annapolis Electric Railway Company, a corporation,

having offices and agents and doing business in the City of Washington, District of Columbia and also in the State of Maryland; for that, heretofore, to wit, at and before the happening of the grievances hereinafter mentioned, the defendant was and still is a common carrier of passengers for hire, and as such used, owned and operated certain lines of electric railway along certain streets and avenues in the City and District aforesaid and between the said City and District aforesaid and the City of Baltimore, State of Maryland; and from the Naval Academy Junction situated between the said City of Washington and the said City of Baltimore to the said City of Annapolis in the State of Maryland; that on, to wit, the 6th day of August 1917, said defendants were engaged in the operation of electric cars over said road between the Cities aforesaid and that plaintiff boarded one of the cars of the defendant company at the City of Washington about 3 p. m. on said date and went to the City of Annapolis in the State of Maryland, having purchased a round-trip ticket which entitled him to go from the City of Washington

2 to the City of Annapolis in the State of Maryland and return to the City of Washington aforesaid; that the said plaintiff about 11:15 p. m. on the said date aforesaid boarded a car of the defendant company to return to the City of Washington by the way of the Naval Academy Junction; that it then and there became and was the duty of the said defendant to safely carry plaintiff from the City of Annapolis to the City of Washington, District of Columbia, but notwithstanding its said duty aforesaid and while plaintiff was a passenger on said car, an agent of the said defendant, to wit, the conductor, grabbed said plaintiff and put said plaintiff off said car; that said plaintiff was put off the car at and near a station between the City of Annapolis and the Naval Academy Junction, said place being, to wit, "Best Gate;" the said plaintiff was put off the said car at about 12:00 o'clock midnight, and that there were no other cars running to or towards the City of Washington on the said road and there was no place at said station where he could properly spend the night, but that he was compelled to stay in said station which was merely a shed; that by reason of the said acts of the said defendant, through its agents and officers plaintiff suffered both in mind and body; that plaintiff lost time and money by reason of his sufferings, said plaintiff being a laborer, and he has expended money in endeavoring to be cured; all to the damage of the plaintiff in the sum of Five Thousand Dollars (\$5,000.00).

Wherefore, the plaintiff brings this suit and claims of the defendant the sum of Five Thousand Dollars (\$5,000.00), besides costs of this suit.

DANIEL W. BAKER,
ROBT. I. MILLER,
Attorneys for Plaintiff.

3 *Plea of Washington, Baltimore & Annapolis Electric Railroad Company.*

Filed December 8, 1917.

* * * * *

The defendant, Washington, Baltimore and Annapolis Electric Railroad Company, for plea to the plaintiff's declaration in the above-entitled cause filed, says it is not guilty as alleged.

THOMAS P. LITTLEPAGE,
GEORGE P. HOOVER,
*Attorneys for Defendant, Washington, Baltimore
and Annapolis Electric Railroad Company.*

Joinder of Issue.

Filed December 10, 1917.

* * * * *

The plaintiff joins issue with the defendant on the plea filed in the above entitled cause.

DANIEL W. BAKER,
ROBERT I. MILLER,
Attorneys for Plaintiff.

Motion for Leave to File Additional Plea.

Filed August 1, 1919.

* * * * *

Now comes the defendant by its attorneys and moves the Court for leave to file an additional plea in the above entitled cause, and as grounds therefor states:

It is advised and believes that it cannot fully and adequately prove its entire defense under the general issue plea heretofore filed.

T. P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

4 Messrs. William E. Leahy and R. I. Miller,
Attorneys for Plaintiff:

Please take notice that the foregoing motion will be calendared for trial on Friday, August 1, 1919, at 10 o'clock A. M. or as soon thereafter as counsel may be heard.

T. P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Service of copy of the foregoing motion and notice accepted this — day of July, 1919.

WILLIAM E. LEAHY,
ROBERT I. MILLER,
Per W. E. L.,
Attorneys for Plaintiff.

I consent to granting of within and waive notice.

WILLIAM E. LEAHY,
For Plaintiff.

Defendant's Second Plea.

Filed August 6, 1919.

* * * * *

And for a further plea to said declaration filed by leave of Court, the Defendant says: That at or about the time and place in said declaration alleged, the plaintiff was put off of a train of the Defendant Railroad Company, by its conductor or agent, which said train was bound from the City of Annapolis in the State of Maryland, to the City of Baltimore in the said State, all of said journey being within the State of Maryland, and the plaintiff was properly and legally so put off by the defendant's conductor or agent, who was under the regulations of the Defendant Company and likewise under the law of the State of Maryland, authorized and required to keep separate white and colored passengers, plaintiff after due notice having refused to obey the lawful and proper directions of the said conductor or agent as to what portion of the car the plaintiff should occupy, and this defendant further says that in so putting the plaintiff off said car, the defendant's conductor used no more or greater force than was necessary.

5

T. P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Replication to Defendant's Additional Plea.

Filed August 13, 1919.

* * * * *

Now comes the plaintiff by his attorneys, and for replication to the defendant's second plea filed in the above entitled cause said plaintiff says that by reason of the information therein alleged he ought not to be barred from having and maintaining his aforesaid action therein against the said defendant because he says that said defendant of *his* own wrong and without the cause in his said last mentioned plea alleged, committed the said several wrongs in the

introductory part of that plea mentioned, in manner and form as the said plaintiff in his declaration hath before complained.

WM. E. LEAHY,
ROBT. I. MILLER,
Attorneys for Plaintiff.

Joinder in Issue.

Filed August 22, 1919.

* * * * *

The defendant joins issue upon the plaintiff's replication to the defendant's second plea.

THOMAS P. LITTLEPAGE.
SIDNEY F. TALIAFERRO.

6

Memoranda.

March 15, 1921.—Jury sworn and respited.

March 17, 1921.—Verdict for Plaintiff for \$500.00.

Motion to Set Aside Verdict and for New Trial.

Filed March 22, 1921.

* * * * *

Comes now the defendant, Washington, Baltimore & Annapolis Electric Railroad Company, a corporation, and moves the Court to set aside the verdict of the jury returned herein on the 17th day of March A. D. 1921, and to award a new trial, and as grounds for such motion respectfully states:

1. Error of law on part of the learned Chief Justice, presiding, in sustaining the objection of the plaintiff to the introduction by defendant of evidence as to a regulation of the defendant company, in the form of verbal instructions given by the Trainmaster and Assistant Trainmaster to conductors, requiring the segregation of white and colored passengers on trains.

To which ruling defendant duly excepted.

2. Error of law on part of the learned Chief Justice, presiding, in granting motion of plaintiff to strike out all of defendants testimony in reference to local sentiment in Southern Maryland and the neighborhood traversed by the Washington, Baltimore and Annapolis Electric Railroad Company between Annapolis, Maryland and Naval Academy Junction, Maryland, regarding the segregation of white and colored passengers on railroad trains.

7

To which ruling defendant duly excepted.

3. Error of law on part of the learned Chief Justice, presiding, in granting the motion of plaintiff to have the jury instructed to return a verdict for the plaintiff on the second plea of the defendant,

upon the theory that defendant's Bulletin No. 502 was not a regulation of the defendant company adopted upon a consideration of the public interest as related to the feeling of the community through which defendant's trains pass, regarding the segregation of white and colored passengers on trains; but merely an enforcement of the statutes of the State of Maryland in regard to segregation.

To which ruling defendant duly excepted.

4. Error of law on part of the learned Chief Justice, presiding, in refusing over objection and exception of defendant, to submit to the jury the question of whether the plaintiff was violating the rules of the defendant company regarding the putting of feet on the car seats and smoking, and elected to leave the train rather than obey the instructions of defendant's conductor in regard thereto.

5. Error of law on part of the learned Chief Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 1, as follows:

"The jury is instructed upon the whole case that they must return a verdict for the defendant."

To which ruling defendant duly excepted.

6. Error of law on part of the learned Chief Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 2, as follows:

8 "The jury is instructed as a matter of law that the defendant as a common carrier had a right, prior to and at the time of the occurrence alleged in the declaration, to make and enforce rules and regulations governing the segregation in its trains of white and colored passengers traveling from one point to another within the State of Maryland, if by so doing the comfort and safety of passengers would be enhanced and better order maintained. They are further instructed as a matter of law that the defendant had at such times a right to apply to and enforce such rules against passengers en route from a point within the State of Maryland to within the District of Columbia, and traveling upon a through ticket, but who were riding upon a local intrastate train."

To which ruling defendant duly excepted.

7. Error of law on part of the learned Chief Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 3, as follows:

"If the jury find from the evidence that the plaintiff violated the rules of the defendant company by smoking in that portion of the train where smoking was not permitted or by putting their feet upon the seats of the car, and refused to obey the directions of the conductor of the defendant's train to cease violating such rules, then they are instructed as a matter of law that the defendant had a right to eject the plaintiff from its train."

To which ruling defendant duly excepted.

8. Error of law on part of the learned Chief Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 4, as follows:

“If the jury find from the evidence that the plaintiff refused to obey the directions of the conductor of the defendant’s train to sit in that part of the car designated by the rules of the defendant for the accom-odation of colored passengers and as a consequence, either voluntarily left the train rather than take the seat designated for him, or was ejected from the train with no greater force than was necessary to accomplish that purpose, then they are instructed that the plaintiff can not recover and their verdict must be for the defendant.

To which ruling defendant duly excepted.

9. Error of law on part of the learned Chief Justice, presiding, in refusing to instruct the jury in accordance with defendant’s prayer No. 7, as follows:

“The jury is instruced that the burden of proof is upon the plaintiff to establish that he was ejected unlawfully from the train, that the injuries of which he complains were the result of the ejection alleged in his declaration. He is not entitled to recover in this action for any injuries or for any loss of earnings which were not shown by a preponderence of the evidence he has suffered, nor which he was not shown by a like preponderence of the evidence were in fact caused by the unlawful ejectment for which he sues.”

To which ruling defendant duly excepted.

10. And for other errors of law appearing upon the face of the record.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Messrs. R. I. Miller, James J. O’Leary, and Raymond Neudecker,
Attorneys for Plaintiff,
Washington, D. C.

GENTLEMEN :

10 Please take notice that the foregoing and attached motion to set aside the verdict and grant a new trial in the above entitled cause will be calendared for hearing before his Honor, Mr. Chief Justice McCoy, holding Circuit Court No. 1, on Friday, March 25th, 1921, at ten o’clock A. M. or as soon thereafter as counsel may be heard.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Copy of the foregoing served and accepted this 21st day of March 1921.

ROBERT I. MILLER,
JAMES J. O’LEARY,
RAYMOND NEUDECKER,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

Friday, April 1, 1921.

Session resumed pursuant to adjournment, Mr. Chief Justice McCoy presiding.

* * * * *

The motion of defendant filed herein for a new trial coming on for hearing, after argument by counsel, it is considered that said motion, be, and it is hereby overruled, and judgment on verdict is ordered.

Wherefore it is considered that plaintiff herein recover of defendant the sum of five hundred dollars (\$500.) with interest thereon from this date for his damages aforesaid assessed, together with the costs of suit, to be taxed by the Clerk, and have execution thereof.

From the foregoing judgment the defendant by its Attorneys in open Court, notes an appeal to the Court of Appeals, and the maximum of an undertaking to operate as a Supersedeas is hereby
11 fixed in the sum of seven hundred and fifty dollars (\$750.).

Memoranda.

April 1, 1921.—Undertaking (supersedeas) on Appeal approved and filed.

April 22, 1921.—Time to submit Bill of Exceptions extended to and including June 16, 1921.

June 16, 1921.—Bill of Exceptions submitted.

Assignments of Error.

Filed June 20, 1921.

* * * * *

Comes now the defendant and complains and assigns errors committed by the trial Court in the following particulars:

1. In sustaining the objection of the plaintiff to the introduction by defendant of evidence as to a regulation of the defendant company, in the form of verbal instructions given by the Trainmaster and Assistant Trainmaster to conductors, requiring the segregation of white and colored passengers on trains.

2. In granting motion of plaintiff to strike out all of defendant's testimony in reference to local sentiment in Southern Maryland and the neighborhood traversed by the Washington, Baltimore and Annapolis Electric Railroad Company between
12 Annapolis, Maryland and Naval Academy Junction, Maryland, regarding the segregation of white and colored passengers on railroad trains.

3. In granting the motion of plaintiff to have the jury instructed to return a verdict for the plaintiff on the second plea of the defendant, upon the theory that defendant's Bulletin No. 502 was not a regulation of the defendant company adopted upon a consideration of the public interest as related to the feeling of the community through which defendant's trains pass, regarding the segregation of white and colored passengers on trains; but merely an enforcement of the statutes of the State of Maryland in regard to segregation.

4. In refusing over objection and exception of defendant, to submit to the jury the question of whether the plaintiff was violating the rules of the defendant company regarding the putting of feet on the car seats and smoking, and elected to leave the train rather than obey the instructions of defendant's conductor in regard thereto.

5. In refusing to instruct the jury in accordance with defendant's prayer No. 1.

6. In refusing to instruct the jury in accordance with defendant's prayer No. 2.

7. In refusing to instruct the jury in accordance with defendant's prayer No. 3.

8. In refusing to instruct the jury in accordance with defendant's prayer No. 4.

9. In refusing to instruct the jury in accordance with defendant's prayer No. 7.

10. In overruling motion of defendant to set aside verdict
13 and grant a new trial.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Copy of the foregoing served and accepted this 20th day of June, 1921.

JAMES J. O'LEARY,
RAYMOND NEUDECKER,
ROBERT I. MILLER,
Attorneys for Plaintiff.

Designation of Record.

Filed June 20, 1921.

* * * * *

The Clerk will please prepare transcript of record to consist of the following:

1. Plaintiff's Declaration.
2. Defendant's Plea.
3. Plaintiff's Joinder of Issue.
4. Defendant's Motion for leave to file additional plea.

5. Defendant's additional plea.
6. Plaintiff's replication.
7. Defendant's Joinder.
8. Memorandum of Trial and Verdict of Jury.
9. Defendant's Motion for new trial.
10. Memorandum of overruling of motion for new trial and judgment on verdict.
11. Memorandum: Appeal noted by defendant, supersedeas bond.
12. Memorandum: of bond approved, and filed.
13. Submission and settling of bill of exceptions and order making bill of exceptions of record.
14. 14. Orders, if any, extending time for submission of bill of exceptions and extending time for filing transcript of record in Court of Appeals.
15. Bill of Exceptions.
16. Assignment of Errors.
17. This designation.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Copy of the foregoing served and accepted this 20th day of June, 1921.

JAMES J. O'LEARY,
RAYMOND NEUDECKER,
ROBERT I. MILLER,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

Monday, November 14, 1921.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

November 14, by McCoy, C. J.

The Court having this day signed the Bill of Exceptions heretofore submitted in this cause now orders the same of record as of the time of the noting thereof at the trial of said cause.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is

made part of this transcript, in cause No. 60828 at Law, wherein Fred Brooks is Plaintiff and The Washington, Baltimore & Annapolis Electric Railway Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of November, 1921.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

16 In the Supreme Court of the District of Columbia.

At Law.

No. 60828.

FRED BROOKS, Plaintiff,

vs.

WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC RAILROAD COMPANY, Defendant.

Bill of Exceptions.

Be it remembered that on the 15th day of March 1921, the above entitled cause came on for trial before Mr. Chief Justice McCoy and a jury; Messrs. James J. O'Leary and Raymond Neudecker appearing on behalf of the plaintiff, and Messrs. Thomas P. Littlepage and Sidney F. Taliaferro, appearing on behalf of the defendant.

The plaintiff to sustain the issues joined in his behalf, called as a witness WILLIAM A. WALLER, (colored) who gave testimony tending to prove that both he and Brooks, whom he knew, lived at Kenilworth, D. C. On August 6th, 1917 he went alone to the Washington ticket office of the Washington, Baltimore & Annapolis Electric Railroad Company and procured a round-trip ticket from Washington, D. C. to Annapolis, Md., at about three o'clock in the day; boarded the next car for Annapolis, arriving there about four o'clock. In going to Annapolis he sat on the left hand side of the car about midway, and there were other colored people sitting in the front, middle and rear of the same car. In Annapolis he met Fred Brooks, and about "eleven o'clock, or thereabouts" at night he and Fred Brooks together went to the station of the defendant to return to Washington. He had previously ridden on the defendant's trains, to Baltimore, to Annapolis and Naval Academy Junction, Md. and had personal knowledge that defendant company operated trains between such points.

17 He and Brooks, when about to return to Washington, approached the train of the devendant, and the conductor,

standing outside, said that that was not his (witness') car. Both showed him their tickets (there being an excursion train at Annapolis) and after looking at the tickets, the conductor said, "All right get aboard." They boarded the car which the conductor indicated, and of which he was conductor after the train left Annapolis. Both went forward and took seats about 10 feet from the front of the car on the right-hand side. Witness sat near the window and plaintiff near the aisle. The train started and nothing unusual happened until just before the train came to Best Gate, Maryland, when witness heard "a loud noise, and I looked around and the conductor, (the same man that indicated the train) was forcing the people back and said 'you colored people get back there; take those back seats,' and I looked around, and, of course, I was busy in conversation; and I looked around and then later on he came back with them, and then came up where we were, and said the same thing."

Mr. O'Leary:

Q. "When he said that what did you say, if anything? A. I asked him why, he says: 'It don't matter why, take those back seats; you got to take those back seats.'

Q. Then what occurred? A. Well I refused to move, he says: 'Are you going to get up! and I said 'Why no.' He said, 'If you don't, I am going to put you off.'

Q. Did you then ask him why he wanted to put you off? A. I asked him why he wanted me to exchange seats; then I asked him did anybody want those seats. I asked him if there was somebody that wanted those seats, and he refused to give me any answer at all, and I did not know why he wanted me to move. I never had had
18 any such trouble before, so then he said if I didn't get back he was going to put me off; so I didn't say any more, and he went away and then came back and said: 'Are you going to move?' and I shook my head and said "No," then he grabbed me very viciously.

Q. Grabbed you where? A. He grabbed me by this shoulder (indicating the left shoulder) right about here (indicating).

Q. He didn't inflict any injury on you. A. No injury.

Q. He grabbed you, and then what happened? A. When he grabbed me, I asked him not to hurt me, I said 'you can put me off without hurting me'; so then he released me immediately, and he says 'well come on,' so then I got up and went on, and I preceded him to the back." Brooks was sitting on my left, he pulled Brooks out as I went out.

Q. Explain to the jury what you mean by that; he did not man-handle him then did he? A. No, No. He was gentle enough after I asked him not to hurt me.

Q. Then what happen-d? A. We went on to the back and I says 'well now, what are you putting me off for, you are putting me off, and I want you to tell me why you are putting me off; and he said, 'yes get off;' and he pushed me. I said 'Now I want to be sure that

you are putting me of-; push me again please'—so he pushed me again. I got off.

The conductor did not at any time give a reason as to why he should leave the seat that he had been occupying. Witness was put off about 11:30 o'clock at night, about 100 feet below the station at Best Gate, Md., he saw no lights and in going to the station, a small shed, about 6 or 7 or 8 feet, he stumped his left foot and fell. Both

19 sat down to wait for another car; two cars passed, but refused to stop on signal of lighted paper. Witness saw no signs of accommodations at Best Gate, and both spent the night in the railroad shed, which was open on one of the four sides. They remained there until about six or 6:30 the next morning, when they returned to Washington.

Cross-examination:

Upon cross-examination the witness testified that he thought he and Brooks had the front seat in the car, but was not quite sure; that he did not put his feet upon the seat of the car and did not smoke; that the conductor took their tickets and it was about 3 to 5 minutes thereafter when he said 'you people get up from here, you will have to take those back seats;' That he did not tell the conductor, nor did Brooks, that he would get off the car before they would change seats.

Mr. Littlepage:

Q. Was Brooks smoking? A. I don't think he was.

Q. Did he have his feet on the front seat? A. No, sir. There was not any front seat since I recall.

Q. You were sitting on it? A. We were sitting on the front seat, and there was nothing in front.

Q. Then, your statement first as to where you were sitting on the car, on direct examination was not correct? A. I was not sure, I stated that I was not sure whether I was on the first seat or 2nd seat, but as I thought it came to me that it was the first seat.

That while at Best Gate that night he saw one car going toward Annapolis which he did not signal. That when he got on the train at Annapolis, after showing the conductor his ticket and being told to get aboard, he did not actually know where that particular train was going, but supposed it was going to Washington.

20 Thereupon the Plaintiff, FRED BROOKS, (colored) to further sustain the issues joined on his behalf, as a witness for himself, gave testimony tending to prove the following: On the 6th day of August, 1917, he went to the Washington ticket office of the defendant and procured a round trip ticket from Washington to Annapolis, leaving about 3 o'clock, arriving at Annapolis about 4 o'clock. He occupied a seat about midway of the car, in which there were other colored people occupying the seats in different

parts of the car. At Annapolis he met Waller and later about 11 o'clock approached with Waller, the station, where there were a large number of persons waiting to get on cars, there being an excursion on that date, and special excursion trains running. Both approached the car to get aboard when the conductor, who was conductor on the car which they afterwards rode, stopped them and looked at their tickets, whereupon he said "Get on." He had not been to Annapolis before but had travelled between Washington & Baltimore on defendant's line. Both boarded the car and went to the forward end of the car; nothing unusual occurred until after their tickets had been collected "from 8 to 12 minutes, somewhere along there," after they had left Annapolis, the conductor came back and said "You all will have to get up from there; you cannot sit here" and we asked him why, and I volunteered and said: "Why, there is nobody to occupy these seats. Why can't we sit here?" I told him "I bought a first-class ticket. I don't see why we can't sit here."

Mr. O'Leary:

Q. What did he say when you asked him why? A. He said: "If you don't get up I am going to put you off," and with that he says: "Are you going to move?"; and Waller shook his head, "no," and with that he grabbed hold of Waller, see, and pulled him up in front of me, and I don't know whether it was the conductor or the
21 brakeman, but someone that was with him, got hold of me.

But Waller says: "Don't hurt me." He says: "You can put me off without handling me like that," and with that he kind of released his hold, and we got up, and he just shoved us down to the door.

Q. Did they lay hands on you too? A. Yes, sir.

Q. When you and Waller inquired as to why you should move, or get off, what reason did he give? A. None whatever.

Both were put off at Best Gate about 100 ft. from the station or shed, which was open with a little bench right along the back wall of it; there were no lights along the way between the point where they were put off the train and the shed, and in walking to the shed Waller stumbled and fell. They stayed all night in the structure; tried to flag the train which followed, but it paid no attention to the signal. The plaintiff wore a palm beach suit and panama hat; there was an awful heavy fog and heavy dew falling and he got real damp from the fog. He walked up and down to keep himself warm. That he suffered in mind and body because of his absence from work the following morning and because he had been a sufferer from asthma, which was made worse by his experience and produced an attack which lasted for two weeks. That his business was running a market garden and stands in two markets and that a conservative estimate of his losses in that connection by reason of his illness was between \$80 and \$100.

Cross-examination :

That when he started back from Annapolis he had the return end of his round-trip ticket, but could not say whether it was of two parts with the perforated line between. That he and Waller did not sit down in the car and put their feet on the seat in front of them; that he did not smoke on that occasion. That at the time the conductor took up their tickets he did not tell them that they must take their feet off the seat, if they wanted to smoke they must go into the smoker and if they did not want to smoke they must go to the rear of the car. That the conductor did not say to him that under the rules of the company and the laws of the State it would be necessary for them, as colored passengers, to sit in other seats in the rear.

Mr. Taliaferro :

Q. What was the next thing that happened after the Conductor took up your tickets. A. There was ladies in the car, and when he came in, of course, they jumped up and went back, you know, and I could not think what was going on; and I felt very much humiliated the way he talked to those ladies. He talked to them like he was talking to a lot of cattle.—“Get up here and go back.” Of course, they jumped up like they was scared, you know, but we sat there, and he came over there roughly at us, you know, and I kept my head, and did not get angry or anything, and he kind of wanted to get on Waller anyhow, so he grabbed Waller before he did me, and Waller said “don’t hurt me; you don’t have to handle me like that.”

Q. Was Waller angry? You say you did not get angry? A. No; Waller talked back to him.

Q. Waller talked back to him? A. Yes.

Q. Did you hear Waller say to the conductor something to this effect, that he would be damned if he would move? A. “No, no, no, Sir.”

* * * * *

Q. You refused to go back? A. Yes, sir.

Q. And did you not say to conductor that you would rather get off the car than move back? A. No, Sir.

23 And thereupon to further maintain the issues on his behalf joined, the plaintiff produced as a witness ELIZABETH BROOKS, (colored) who gave testimony tending to prove that she was the wife of the plaintiff, knew of his physical condition before and after he spent the night at Best Gate and the “night after it occurred I noticed that he had a severe cold and also asthma very bad that night so that I had to stay up all night with him and afterwards, why, he complained also with his back for several days; I think that is about all.”

Thereupon to further maintain the issues on his behalf joined, the plaintiff produced as a witness LAFAYETTE JEFFERSON, (colored) tending to prove that he was acquainted with the plaintiff, and knew his physical condition both before and after he spent the night at Best Gate. That he called upon him shortly thereafter and found him quite sick, shortness of breath and sore all over. That he was sick for about two weeks.

Thereupon to further maintain the issues on his behalf joined, the plaintiff produced as a witness DOROTHY BROOKS, (colored) tending to prove that she was the daughter of the plaintiff, 15 years of age; recalled the night her father spent at Best Gate; that she did not know her father's physical or mental condition before that date, that he was not sick before that date; that after he spent the night there he suffered with asthma for about three weeks.

Thereupon to further maintain the issues on his behalf joined, the plaintiff produced as a witness ROBERT PHILLIP ROBB, (colored) that his business was waiter at the Ebbitt House, that he knew Brooks, recalled the incident when it was said Brooks spent the night at Best Gate, Md.; he did not know anything about his physical and mental condition prior to that occasion; did not see him "recently", before that happened; did see him about five days afterwards and saw he was in pretty bad condition, could
24 hardly talk, seemed to be very hoarse, could hardly breathe;
saw him about a week later when his condition had improved very little.

Thereupon the Plaintiff rested and the defendant to maintain the issues upon its part joined, produced as a witness OSCAR E. BOOTH, who gave testimony tending to prove that he was a resident of Glen Burnie, Md., occupation, conductor on the Washington, Baltimore & Annapolis Railroad, having been so employed for about nine years; was working as a conductor on August 6, 1917, having a run between Annapolis and Baltimore. He left Annapolis at 11:20 P. M. on his last trip bound for Baltimore. His train was composed of one car and "somewhere around 18 or 20" passengers boarded the car at Annapolis, that passengers boarding his train at Annapolis presented to him tickets for identification as to their destination.

Mr. Littlepage:

Q. Have you seen these two gentlemen here before, the plaintiffs in this case (referring to Brooks and Waller; this interlineation supplied). A. I think I have seen one of them.

That after leaving Annapolis on the night of August 6th, at 11:20 something unusual occurred.

Mr. Littlepage:

Q. Now, tell the Jury what occurred. A. Now, after leaving Annapolis, I had a straight coach, straight car, with a smoking compartment on the front end and six or seven seats on the front end of it. I went on to take up my tickets in the smoker and came right through and on the front seat of the ladies' compartment there were two colored people sitting——

Mr. O'Leary:

25 Q. Do we understand rightly, "the front seat of the ladies' compartment?" A. Yes; ladies' compartment. I took tickets and I tore off the coupons and handed *it* back to them and said: "You will have to take your feet off the seat and stop smoking. If you want to smoke, you will have to move into the other compartment through the door. If you do not want to smoke, you will have to move back to the two rear seats which the rules of the company require and the laws of Maryland.

Q. What did they say to you? A. They turned around talking to one another. They did not seem to pay so much attention to that, and as I was in a hurry to get the rest of the tickets before I got to Camp Parole, about two minutes out of Annapolis, and some people wanted to get off there and I had to get them before they got off. After getting these tickets and letting the people off at Camp Parole, they had not moved. I went up to them and again told them they would have to stop smoking in that compartment, and move back into the rear seats, and if they wanted to smoke they would have to move into the smoking compartment. They said they were holding tickets to Washington and they would ride where they damned pleased.

Mr. O'Leary: Just a minute. The plaintiffs at this time asked the Court to strike from the record the testimony with reference to the alleged smoking, alleged taking of their feet off the front seat, on the ground, that it is irrelevant to any issue raised in this case.

The Court: To that the defendants pleaded——

Mr. O'Leary: Yes, but the special pleading in this case is a regulation with reference to the segregation of passengers.

The Court: No, but they plead not guilty and then plead a special plea, and if they showed that it be the fact that the plaintiffs were smoking in the car——

26 Mr. O'Leary: No, not if the plaintiffs understand the case. Your Honor well knows that the Hillery rules are not in force in the District of Columbia and that the old Common Law rule limiting the scope of the proof on certain actions still applies. Now, to the taking hold of the plaintiffs in this case they plead not guilty. That puts that in issue. Whether they pushed the plaintiffs on that occasion. We are not objecting to their offering evidence to show they did not push the men, and they have advisedly filed a special plea in order to put in a special defense, knowing that

the pleadings in their plea—and they filed a special plea, namely, that they put those men off because following the segregation rule of passengers. As to the segregation of passengers, the plaintiff does not object, but there is no issue in this case as to any regulation concerning smoking and putting feet on the train seat and this is not in this case at all, and the plaintiffs object to any testimony along that line and ask that the testimony so far given be stricken from the record. If a man is charged with assault and battery he cannot plead self-defense. He would have to plead it specially. The language of the special plea covers the language that we are asking, in that the defendants' conductor or agent who, under the regulations of the defendant company and likewise under the laws of the State of Maryland, authorized and required——

The Court: Well, I think that means to say that the regulations corresponded with the laws of Maryland, and if so, it would not bring in any question whether they were smoking or sitting with their feet on the seat.

Mr. Littlepage: If your Honor please, I believe if he had stood entirely on the general issue plea the railroad company has the right to make reasonable rules and regulations about the conduct and behavior of passengers on their trains, and the plaintiffs' case depends upon proving the allegation in his declaration. Now, we say this——

The Court: Well, the allegation that the thing was unlawful is merely a conclusion that has to be put in there just to show it was unlawful, but I do not think you need to put the unlawfulness
27 in issue. I wish we could get rid of these Common Law pleadings here. My recollection is that Mr. O'Leary's statement is right; that is, in an action for assault the denial of the assault merely puts in issue the physical fact, that there was justification has to be pleaded. There is a lot about molliter manus imposuit—isn't that so?

Mr. Littlepage: If your Honor please, in addition to the proposition of the plea of general issue and the special plea, I believe under the ordinary rules of evidence we are permitted to show where these people sat; we are permitted to show all the conditions and circumstances and surroundings. Now, after the case is in, if the Court decides then that any of these things shown do not constitute a proper defense and the jury should not take into consideration, we will have no objection.

The Court: I think that is probably so. I think the plaintiffs have described the situation that existed. I do not know why the defendants cannot equally describe it, and whether I have got to tell the jury because the plaintiffs were smoking the defendant has a right to put them off the train—that makes a question of law.

Mr. O'Leary: On that point the plaintiffs would call attention to the Axnian case where the Washington Gas Light Company——

The Court: The point Mr. Littlepage makes now is: This is nothing but a description of what took place and what the situation was at the time.

Mr. O'Leary: The plaintiffs will ask your Honor at the con-

clusion of this case that even if it were true they had done these things, that would be no defense.

The Court: I presume we can go ahead and see what happened, and then I will have to rule on that.

All right, you may go ahead.

The Witness: I went up to them and told them again after leaving Camp Parole that they would have to move into the smoker if they wanted to smoke, and if they did not want to smoke to
28 move back into the two rear seats, which the rules of the company and the laws of Maryland require. They told me they had tickets to Washington and would ride where they damned pleased.

The Court: Were they smoking at that time?

The Witness: Yes, sir. They had been smoking. They said then they would not move back; that they would get off; I said: "All right; I will let you off at the next station," which was Best Gate. I reached up and pulled the signal, and when we stopped there I went up to them and told them they would have to either move back or get off. They said they would get off. They came on back down the aisle and they got a couple of seats from the rear and it seemed one did not want to get off; it looked stormy; and the other said: "Let's get off"; one said: "It is coming up a storm and we had not better get off," and told the other one to sit down and not get off. The other one said: "Yes; get off," and they walked down the steps and got off. I did not put my hands on them or push them in any way, and I went on. When they stopped there at the door, about two seats from the rear of the car, I asked them what they were going to do, whether they were going to sit down or get off. I told them they were delaying the train there and I could not delay it there. They said they would get off. So they went on and got off.

Mr. Littlepage:

Q. You stated, I believe, that you did not put your hands on them.

A. No, Sir, I did not.

Q. You did not shove them? A. No, Sir; I did not shove them.

Q. Did any passengers get on at that station where you stopped?

A. Yes, Sir.

Q. They did. A. Yes, Sir.

Q. Were these seats in the rear that you directed them to
29 take the same character of seats as those in the front? A. Yes, Sir.

Q. All the same? A. Yes, Sir.

Q. They were? A. Yes, Sir.

Q. Same size? A. Yes, Sir.

Q. Same width? A. Same width and all.

Q. All the same. A. Yes, Sir.

Q. Where did your car stop in reference to the station? A. Best Gate, the rear end, the rear steps stopped about the middle of the platform there.

That the motorman of the car at that time was J. W. Sewell, not in the service of the Company at the time of the trial, and he did not know where he was. That defendants' exhibit No. 1 was a round-trip ticket from Washington to Annapolis over the Washington, Baltimore and Annapolis Railroad, the same kind that was in use at the time of the occurrence and was the same character of ticket, a portion of it, of the ticket presented to him by Brooks and Waller on that particular night, and the only round trip ticket sold by the company taking one to Annapolis and return, that it was necessary to change cars both going from Washington to Annapolis and returning.

By the Court: * * * Now, I will admit the ticket. Now, you have the whole case and your special plea, and it can be passed on now, if I am not mistaken, just as well as any time. You are going to contend because this was running Annapolis to Baltimore, therefore, the regulations and the Statute applied. That is one of your contentions.

Mr. Littlepage: That is it.

30 The Court: Because these people were starting upon an interstate journey and were put out of this car, being an interstate journey from Annapolis to Washington. Now, what becomes of the Maryland Statute and the rules of the company?

Mr. Littlepage: That has been answered by the Supreme Court of the United States, your Honor, in the case of Childs vs. Chesapeake & Ohio Railroad Company.

Thereupon a discussion of the case referred to in 218 U. S. 71, and a review of the volume by the Court.

That a ticket like defendant's Exhibit No. 1 was presented to him by Brooks and Waller on the night in question, he tore coupon off, Annapolis to Naval Academy Junction and handed the two remaining pieces, Naval Academy Junction to District Line, and coupon good for city ticket, back to them.

That he knows the sentiment among those people who are using the line between Annapolis and Baltimore, or Annapolis and Annapolis Junction (Naval Academy Junction supplied by counsel).

Cross-examination:

He had seen lots of colored people get on and sit down by the side of the white people and seen the latter get up; that he could give the names and addresses of five persons to whom in August 1917 he had talked to regarding the matter of local sentiment, and that he had seen quite a good deal of sentiment in favor of segregation of the races; witness having lived in Anne Arundel County.

That a copy of defendant's Exhibit No. 2, Bulletin No. 502 to all conductors, issued by the defendant railroad company, was given him, as a conductor, as a written regulation governing the matter of segregation of colored and white people; that he recognized the paper as a copy of the regulation given him by Mr. Carson Schumacher, Trainmaster of the Washington, Baltimore and Annapolis

Railroad, and the one under which he was operating as a conductor at the time of the occurrence.

31 And thereupon Defendant's Exhibit No. 2 hereto attached was offered in evidence and the following occurred:

Mr. O'Leary: I hand your Honor a paper identified by the witness based upon the law of Maryland. The paper written shows on its face that the alleged regulation relied upon in this case is a rule promulgated under the Maryland Law, and as proof thereof hand you the regulation which quotes the Maryland Law, or says the regulation is made in pursuance thereof.

Mr. Littlepage: If your Honor please, with reference to the objection of Mr. O'Leary, it would make no difference upon what ground or basis the regulation is made if the company had the authority to make that regulation. If that regulation itself is a regulation which this company had authority to make and it is made in pursuance of any of its authorities, it is still a valid regulation. Sometimes we have seen occasions where the Courts above have said the Courts below erred in their reasoning, but reached a correct conclusion.

The Court: We often do that. We often reach incorrect conclusions from right reasoning too.

Here is the situation, Mr. Littlepage: Your regulation, if it were based upon the judgment of the railroad company that the local sentiment in the community required the segregation, would be a valid regulation, but it presupposes that the officers of the company, viewing the situation locally, have determined that that is the best thing to do so as to save trouble, but you say now this is the regulation which the witness was endeavoring to enforce, it was not a regulation in that sense of the word. It was an instruction to him to carry out the law of the State of Maryland, and does not presuppose that the railroad company had judged the situation for itself and said it would better be done in the interest of peace and good order, "But the Statute of Maryland tells us to do this thing, and, therefore, we

32 annex a copy of it, and we tell you under that Act we have got to carry out the orders and you are the one to do it." And then, I think this brings us right back to the question of whether you are justified under the Law of Maryland.

* * * * *

Mr. Littlepage:

Q. Mr. Booth, when you applied for a position on the Washington, Baltimore and Annapolis — as conductor, what, if any, preparation, training or instructions were given you?

Mr. O'Leary: I object to that as irrelevant and immaterial, if the Court please.

Mr. Littlepage: The purpose of that question, your Honor——

Mr. O'Leary (interposing): I object to Counsel stating the purpose in the present of the Jury. If it is irrelevant it should not be stated at all.

The Court: You may come here and state it.

And thereupon the following proceedings took place at the bench, out of the hearing of the Jury.

Mr. Littlepage: The purpose of this question is to show that when he was inducted into the service as a conductor, he was put in charge of one of the other conductors, or officers of the company, and there given various instructions in reference to the matter of handling trains and otherwise, including the instruction that colored people must be segregated from white people on local cars running in Maryland.

Mr. O'Leary: Of course, your Honor, it is objected to on these grounds. Assume that somebody told him he could do something that was in violation of the law. That would not excuse him, or excuse the man who told him. The second ground of objection is that they are relying on this Maryland Law.

Mr. Littlepage: We are relying on the Maryland Law in its full force and effect, but we went into this thing thoroughly before, and
33 put in the special plea with regard to the regulations, in addition to the law, for the very purpose of this. We have not seen this man, nor spoken to this witness since he was on the witness stand before noon.

The Court: What did you say the objection was?

Mr. O'Leary: Will you please read that?

(The reporter read the portion of the record referred to, being the ground of objection made by Mr. O'Leary, as heretofore stated.)

Mr. Taliaferro: We can assume, perhaps, that he might have been told to do something which was not in violation of the law.

The Court: The question is are you endeavoring, in this way, to prove a regulation?

Mr. Littlepage: We are going to prove an oral regulation or instruction, your Honor, given separately and distinctly.

The Court: That was by another conductor. He was instructed by another conductor.

Mr. Littlepage: He was instructed by another trained conductor and we will qualify him. He was instructed by an officer of the company, that is, an Assistant Trainmaster, in that particular case.

The Court: Mr. O'Leary's objection, I suppose, goes to the fundamental proposition that you must prove that there was a regulation of the railroad.

Mr. Littlepage: We are going to prove it, your Honor. We have proven the written regulation, which we maintain is entirely valid, because the Statute provided for no regulation. It simply was a law. It did not say that regulation should be issued thereunder; but simply taking that as one of the evidences of the sentiment, not only the law, but the sentiment, and knowing the sentiment we wrote that regulation and attached a law to it to give it a little more importance, and a little more force to the men who were operating under it. They would have more respect for a thing that is

said to be the law. But in addition, separate and distinct from that this man had oral instructions at the time he was inducted into the service, because at that particular time this condition
34 obtained and they had instructions at that particular time, the same as they did on a great many other things, that were not written.

The Court: Do you claim that any instruction is a regulation, no matter who it came from, or where it came from?

Mr. Littlepage: No, your Honor. It must come from somebody who is a competent authority, who is entrusted with the duty of giving it.

The Court: Now then, a regulation of a corporation is usually something adopted by the corporation in its corporate capacity. However, it may be they could delegate it. I do not know whether they could delegate it to somebody else to adopt or not. Of course, it may be, that if all conductors were instructed through a series of years, that might be equivalent to a regulation.

Mr. Littlepage: It is a system, your Honor, adopted by the Company in breaking these men in. There are many of the regulations, regulations with reference to courtesy to passengers and regulations on a great many subjects. I might name 500 things that are important and for which these men are punished when they do not obey, and for which they have been punished. It is important that they be given those instructions. This particular regulation, together with the method——

The Court (interposing): Let us suppose that some man, who inducted this conductor into office and instructed him in his duties, had himself, of his own notion, undertaken to do this. What would you say as to that? Would you say that was a resolution of the company?

Mr. Littlepage: Not unless the company had authority to do it.

The Court: I am leaving the Statute out of consideration entirely. You are claiming that the company, regardless of the Statute, had a right to adopt this regulation. I am going on that theory. Now then, could you prove that there was such a regulation by proving that the train dispatcher, or the Superintendent of Operation, told the conductors to do these things?

35 Mr. Littlepage: The very nature of the regulation itself or of the instructions, would speak as to whether or not it would be such a regulation or of such a general character that they would probably have authority to give it.

The Court: That is the point. I am not clear as to that. A railroad company, on your assumption, has a right to adopt a regulation, and I am taking it for granted——

Mr. Littlepage (interrupting): A reasonable regulation.

The Court: A reasonable regulation. Let us take it for granted that that is so, and it would bind these plaintiffs. Now how must the regulation be adopted so that we may know that it is a regulation? That is the point. In other words, how are you going to prove that there was such a regulation?

Mr. Taliaferro: I think the answer to that is this. The way we propose to prove the regulation of this company in this respect, this verbal regulation, is by having this conductor, Booth, testify that he received such instructions from a certain source, and then by having his instructor, who was authorized to do that work, as Assistant Trainmaster of the road, testify that he gave him such instructions, and therefore, that he gave other conductors such instructions, and that it was general policy and practice of the road to so instruct them.

The Court: Where did he get his authority?

Mr. Taliaferro: We can have him state that. He gets it from higher up.

Mr. Littlepage: It is impossible, your Honor, you see, to bring all these people in here. It goes clear back, originally to the authority given a General Manager, we will say, or Vice-President, by the Board of Directors. They have power to do certain things. To undertake to bring everybody, from the Assistant Trainmaster and Trainmaster and Superintendent, and all these people, into Court is an almost impossible proposition.

36 The Court: This is my difficulty, Mr. Littlepage. A railroad may adopt a reasonable regulation for the management of its trains, and what now. This particular regulation affects persons and their right to be here, there, or the other place on the cars. If it is a reasonable regulation, when depends upon the weighing of considerations, one way or the other, then it can be upheld. But, can the General Train Superintendent be said to have power to weigh these considerations and himself promulgate the regulation?

Mr. Littlepage: Take the converse, your Honor. Suppose he does do that and proposes as a matter of regulation, some other regulation for the safety and comfort of the passengers. Suppose an employee of that road failed to comply with those regulations, to the detriment of somebody's health or safety, then the railroad company could come in and say "Well, this man did not have authority to do that." Would not the plaintiff, in that case, prove that he was in the position of superintendent, that the superintendent was a man, who generally, in the knowledge of railroading, has authority to issue necessary and proper regulations? Would we not be bound by it, if we were to adopt a regulation about a crossing to the effect that every car must stop at that crossing? If it was generally known that that was a regulation, and some man drove his wagon across there, thinking that this car was going to come to a stop and knowing that there was a regulation for every car to come to a stop within 100 feet of that crossing and if, relying upon that regulation, he was struck, I think we would be bound by it and could not get away from it. In fact, we have been bound by some of those very things.

The question arises as to some other conductor instructing him. If he was just an ordinary conductor, perhaps he could not pass along and say to these men, "Nos, the orders of the company are that you must do so and so; but, here is a man who is picked to instruct these men in the thousand and one things that are important.

37 I might say, for the correct operation of a train, as to how they should use the air, for instance, and hundreds of other things. They could not all be put in books, and yet they become important; they become regulations that are well known to the public; the public rely upon them, and there is no question that the company should be bound by them if anybody suffered, as result of disregarding them.

If that be true, the converse ought to be true that the company could avail itself of a regulation, provided it proved that that regulation was made by some person in authority, and upon whom this conductor had the right to rely. I think it would be very dangerous to hold that a company could get out of regulations because some superintendent, perhaps, attempted to provide that there was a regulation that ought to be made and handed down. Of course, the president of the company, may not come out on the line and tell these men all these things. Somebody down the line has to do it.

The Court: I am not quite clear about your reasoning with regard to these other regulations. It is proof of negligence, I suppose, if a train is not stopped at a crossing, where it is required to be stopped by some instructions that are given, because the giving of the instructions is an admission that there is some necessity for stopping at that point. Otherwise, people might be hurt. But, liability does not follow because the train was not stopped there, because it depends on whether the act was negligent or not, and not on whether there was the regulation to stop. But here is a clear regulation which has to do with where people shall sit in a car, and the purpose of that is that there shall not be danger of friction between the passengers. It is based upon a thing that requires it to have a legal basis, namely, the legal basis of reasonableness. Also, it has to do with a segregation, which is bitterly resented by some people, namely, these very people who are here.

Ordinarily, they would have the right to sit anywhere in the car where there was a vacant seat, but it seems to be good policy
38 to segregate them. Who shall pass upon that policy? Shall it be the Superintendent of Equipment, or the General Manager, or the General Passenger Manager? Is he the man to whom it can be delegated to say whether or not such a regulation is proper when the result is going to be the segregation of passengers? That is the thing, it is a serious question in the case. If I let it come in, and it is wrong, it is fatally wrong.

Mt. Littlepage: The answer, if your Honor please, is this. If this regulation which we have introduced, this typewritten regulation which has been identified, had mentioned nothing about this law, I assume there would not be any question about it. Our position is that that law is valid today, and that the regulation, apparently, is valid.

The Court: We have to keep the law out absolutely, because, if the law is good, it makes no difference what your regulations are.

Mr. Littlepage: But from an abundant of caution, which we al-

ways attempt to exercise, we put in every possible defense that appears to us to be a valid defense.

The Court: I understand, but this is not a question of whether or not you have a right to use it if you can prove it. I think, under the cases, you have a perfect right to, but the question is, does any such thing exist? If there any such resolution? I am going to let it in. I have let in the testimony about sentiment, etc., although I do not feel that you have proved any resolution of the company. You have pleaded a resolution of the company.

Mr. Taliaferro: A regulation, if your Honor please.

The Court: You have proved a regulation of the company and it is in regard to a matter where, off hand, I should say it would require corporate action of some kind. You had a perfect right, and I think the man who promulgated these regulations, as you call them here, had a perfect right to call the attention of conductors to the law. I have no doubt it was his duty, and it required no action from anybody. It would have been a breach of the duty of
39 the railroad company to its patrons if the attention of the conductor had not been called to that law. That is one thing. But you are relying on something separate and distinct, and I do not see it.

Mr. Littlepage: If your Honor please, the regulation not only calls attention to the law, but goes ahead and tells them how to load the passengers. The purpose of that is, apparently, to prevent conflict. After the law is quoted, in addition to the law, it goes ahead and says:

"Now, therefore, when you are in charge of trains which carry passengers to which this law applies, you will start loading colored passengers in the rear seats and white passengers in the forward seats."

That is in addition to the law, and the regulation——

The Court (interposing): No; that tells them how to do it. That is a perfectly good thing to do. That is simply telling them how to carry out this law. But, to get back, where is your regulation adopted by this company, based upon the policy supposed to be involved in the segregation of the colored people from the white people. Show me a regulation of the company.

Mr. Littlepage: We maintain, your Honor, that these instructions have the full force and effect of regulations, because the presumption surely must be in their favor. If it were something that arose entirely under the authorities, the legislature of a state passes an act which becomes a law of the state. Now then, there may be some parts of the state where the particular local sentiment might not be strong enough——

The Court (interposing): Mr. Littlepage, I tell you that if that law applies to this case, I do not care whether your conductor here learned of the law from Mr. Clagett. If he learned of the law from Mr. Clagett, who had nothing whatever to do with running this road, five minuted after the legislature adjourned and the Governor

40 signed the law, making it a law, and if he knew of it and thereupon proceeded to segregate the passengers according to the law, nobody could complain about that. It does not take a regulation to give force to the law.

Mr. Littlepage: Would your Honor be good enough, at this juncture, to read a paragraph of this case, beginning with this paragraph (indicating). That is the Hart case in the Court of Appeals of Maryland (handing book to the Court).

The Court (after examining book): I say, the Maryland case says that you may adopt a regulation, and I am saying that you may too. I am willing to follow this, because this Childs case practically says the same thing. You may have a regulation if there is not any statute, but what I want to know is how you are going to prove that you had such a regulation?

Mr. Littlepage: It also says, your Honor, that the statute is in force as to intrastate passengers, as to passengers on those trains. It says it is valid as state law.

The Court: But you are justifying under two things. I may have to exclude one and let you have the other. I say that apparently the statute applies to this case, as nearly as I can see.

Mr. Littlepage: We think it does.

The Court: All right; let us forget that for a minute. Assume that I am going to tell the jury that the statute applies. But you say you have something besides the statute.

Mr. Taliaferro: That is, a verbal regulation, your Honor; that is all. That is what we are trying to prove.

The Court: Can that be proved that way?

Mr. Taliaferro: We think so.

Mr. Littlepage: That is a matter for your Honor to determine.

The Court: I know it is, but I want some day-light on the situation.

Mr. Littlepage: I was rather careful, in framing my question to this conductor, so that we would not unintentionally violate any proprieties in attempting to prove that.

41 The Court: Mr. O'Leary has flatly raised the objection, now, that there is no proof of any regulation. How can a regulation be proved? That is the question.

Mr. Littlepage: If it was a written regulation, your Honor, it should speak for itself. If it is an oral regulation, it should be proved, and it would have to be proved the way it was given, by word of mouth.

Mr. O'Leary: Who promulgated this regulation? Where is the man? In what form did he put it, so that it might be known? Surely, secret instructions to trainmen could not be binding upon or affect third persons. An unknown regulation cannot be reasonable. If counsel representing the railway company cannot lay their hands on the words and figures of the regulation, how could you expect ignorant colored people to know about it?

Mr. Littlepage: We tell them when they get on the trains. We cannot write each of them a letter, or advertise it in the newspapers.

Mr. O'Leary: Where is the regulation posted in the train? Give us the authority by whom it was published.

Mr. Littlepage: It does not have to be published in the train.

Mr. O'Leary: Passengers are not *giffen* with the power of divination. They have to know.

The Court: That brings in another question, as to what notice of it has to be given. The conductor claims that he told them, so that they had notice of it at that time. He was not complaining of them because they went there in the beginning, but because they stayed there after they were notified of the regulation. I want to know how the regulation can be proved. That is the situation.

Mr. Taliaferro: We have not at hand, at the moment, any law on the point, but our tender is to prove, verbally, as Mr. Littlepage
42 says, in the same manner in which it was learned by this man from the instructor, and by the instructor who gave it to him, what the regulation was.

The Court: How long has that sort of thing been going on?

Mr. Littlepage: That is a custom, your Honor, among all the railroads.

The Court: How long has it been going on on this railroad? We cannot go by custom.

Mr. Littlepage: As to giving the instructions?

The Court: As to giving instructions.

Mr. Littlepage: Ever since the railroad was constructed. It is the only way they can do it. There are many hundreds of things that are very important for the welfare and safety of the passengers that are not published in books.

The Court: I understand that. If a train dispatcher knows that some situation has proved to be dangerous, I suppose he can immediately notify every motormen on the road that he must do a certain thing at a certain place; but that is not the question. Here is a general policy of segregating the passengers. That is not an emergency proposition. It is a thing that could perfectly well have been adopted by a resolution of the board of directors. They could not say that this was an emergency proposition which they could leave to the train dispatcher, or the passenger agent, or whomever you please. They could have set down and said what their views were with regard to segregating them. The question is this: Is anything short of that enough?

Mr. Taliaferro: Just one more word, your Honor. We maintain that we have a printed regulation, which has been presented. In addition to that, we have these verbal instructions. That is what we are tendering proof of now. It is a double-barreled proposition.

The Court: Then, you come to the question of whether that is the way a regulation of a railroad to segregate them should be made or promulgated. The obligation upon a conductor to segregate
43 did not arise from the fact that Mr. Schumacher gave this notice to the conductor. It arose under the law of Maryland, and he was simply telling them what the law was, because the railroad company would be punished, I suppose, if they violated the law. There were some penalties in the act, I assume. They would be pun-

ished if they violated it. He was not creating a regulation. He was simply saying: "Here is the law. Obey the law, and when you are obeying it, do it this way, so as to avoid friction." That is all right.

I tell you, frankly, I am inclined to think that if this goes in, it will be error that will lead to reversal in two minutes in the Court of Appeals. That is my idea about it.

On the other hand, the statute is an entirely different thing.

Mr. Littlepage: As I understand, your Honor has not ruled yet as to the validity of the statute.

The Court: As I have read this Childs case, I think the statute is binding. It seems to be exactly the case.

Mr. Littlepage: I would say very frankly to your Honor that when I asked the plaintiffs themselves if they knew where the car was going, if they had said they knew the car was going to Baltimore, I should have moved at that moment for an instructed verdict, because I think there can be no question about the Hart case and the Childs case. The only difference between this case and the Childs case is that these fellows were beginning on a local train and the other fellows ending up on a local train. In fact, I think, there being no proof that this was not a local train, the defendant at this moment is entitled to an instructed verdict. I do not think there can be any question about that.

The Court: That is the way it looks to me, offhand. However, I *will* willing to listen to Mr. O'Leary about it. But, what shall I do with reference to this particular point that we have here now? I see, as yet, no regulation of the railroad.

Mr. Littlepage: I would prefer that your Honor, at the present moment, should overrule that, for the sake of the record.

44 Mr. O'Leary: There is nothing offered in evidence yet. Are you offering that paper in evidence as the regulation?

If so, I will object to it.

The Court: No. He offers to prove by this witness that when he was inducted into the service he was in charge of a man who gave him certain instructions. One of the instructions was about the segregation of white and colored people. They offer to prove, further, that this man who gave him these instructions was at that time what?

Mr. Taliaferro: Assistant trainmaster.

The Court: Assistant trainmaster, and, as stated, had authority to tell conductors that they must segregate passengers.

Mr. Littlepage: That is a correct statement.

The Court: The objection to that is that the defendant is relying upon a regulation of the company, and that even though these facts he proved, they would not establish a regulation of the company. I sustain that objection and give the defendant an exception. That is the state of the record.

Mr. Littlepage: All right, your Honor.

Cross-examination:

Witness testified that schedules trains left Annapolis on the evening of August 6, 1917; one at 8:30 of which the witness was con-

ductor; one at 10:30 of which Mr. Sherald was conductor, and one at 11:20, the last that night, of which the witness was conductor. That the car was a straight passenger coach with two compartments, one the smoking compartment, forward.

By Mr. O'Leary:

Q. Now, did I correctly understand you to say you are sure this man was on your car on August 6, 1917? A. I say I think he is one of them, I cannot swear to it, I think he was one of them. I thought I identified the man because I remember one of them was not real dark.

45 That he did not obtain the names of the persons who got off the car and that he did not eject them but they got off of their own accord. That Camp Parole was nearly three miles from Annapolis, and Best Gate four miles. He does not recall whether there were colored women in the car, or other colored people beside the two men, Brooks and Waller. He first told them about taking rear seats just after he had left Annapolis, and was taking up tickets, and it was after the train had left Camp Parole that the men first said they would get off the train rather than move back. There seemed to be coming up a storm, it was cloudy and seemed to be thundering, but he does not know whether it rained that night or not. One of the men hesitated about getting off because of what appeared to be an approaching storm. Mr. Arth was standing on the rear platform of the car at the time Brooks and Waller got off. Arth had just got on at Best Gate Station, and was waiting for the two men to get out of the way so he could get into the car.

Thereupon, the defendant to further maintain the issues on its behalf joined, called as a witness CHARLES W. CLAGGETT, who proved the following: His occupation, Attorney at Law, admitted to the Court of Appeals of Maryland in 1891, *abd* practiced in the Courts of the District of Columbia since about 1890.

By agreement of counsel it is conceded that rather than have the witness testify regarding it the Court would take judicial notice that the law codified in volume 3, of the Code of Maryland, Sections 398, 399, 400, 401, 402, and 403 of Article 27, An Act passed in Session of 1908, Chapter 248, referring to the segregation of white and colored passenger- was in force in the State of Maryland on August 6, 1917.

The witness further testified that he was born in the state of Iowa, but was taken to the State of Maryland when about 9 months of age, and had resided there ever since, except for residence, a portion of the time in the District of Columbia, when he had always retained a voting residence in Maryland and had returned there very frequently—two or three times a month. As a member
46 of the Legislature of the State of Maryland in 1918, he had occasion to travel frequently to and from Annapolis, Md., and

during the 10 years preceding the date of his testimony he had made business trips to Annapolis two or three times a year, that he knows the sentiment of both the white and colored people in that section of the State regarding the segregation of passengers on railroad trains, and that there has been a strong objection to colored people occupying the same seats with white people.

Thereupon, to further maintain the issues upon its behalf joined the defendant called as a witness CLAUDE RAY ARTH who gave testimony tending to prove that he was a resident of Gambrills, — Arundel County, Md., and had been since 1916. In August 1917, he was stenographer and typist in the paymaster's office in the Naval Academy, had never been in the employ of the defendant, and had no connection, whatever, with the defendant company. On August 6, 1917, between 11:20 and 11:30 o'clock P. M., he boarded a train of the defendant at Best Gate Station, "west bound through Naval Academy Junction." The car came to a stop right at Best Gate Station where he boarded it; he saw the car approach and it made but one stop. It did not go beyond the station and back up, but made a regular stop. He boarded the car and was on the platform when he observed the conductor at the front end of the car talking to two colored men. He could not hear anything that was being said but the voices of the colored men seemed to be a little loud, which was what attracted his attention.

By Mr. Taliaferro:

Q. What next occurred? A. I moved into the car to take a seat, by that time the two men followed the conductor down the aisle, when they got about opposite me the conductor said to the men: "now, if you will please take seats that are assigned to you for colored people, why it will be all right, if not, you will have to get off the car and please hurry because you are holding up the train schedule."

47 Q. Did you hear them say anything at that time. A. One of them said "all right let's get off."

Q. Did you hear anything else said at that time, or do you recall anything? A. I think the conductor at that moment said: 'Well please hurry, because you are holding up the train schedule.'

Q. What next occurred? A. They got off.

Q. Did you at any time see the conductor put his hands on either one of these men? A. No, sir, I did not, I saw them when they got off the car.

Q. Did you see anybody put their hands on either one of these men? A. No, sir.

Cross-examination:

He had a dislike to occupying a seat with colored men but does not recall having expressed his dislike.

And thereafter the following occurred:

Mr. O'Leary: The plaintiff at this time asks the Court to strike from the record the following testimony: first, the testimony of the alleged feeling or opinion with regard to the segregation of white and colored passengers, and that motion is based upon the fact that there has been offered in this case no proof of a regulation promulgated by the carrier defendant.

The Court: Well as I ruled yesterday, I would not leave the case to the jury on that theory.

Mr. O'Leary: Do I understand, your Honor, that the motion of the plaintiff is denied to strike that testimony from the record, if so, I will be compelled, in the interest of my clients to note an exception to your Honor's ruling, because I think it is irrelevant on the ruling your Honor has made. There is no proof of regulation.

48 The Court: Yes, I have in mind something else, I will strike it out and give defendant an exception.

By Mr. O'Leary: Then, the plaintiff moves at this time to take from the jury the second plea and strike that plea out of the case on the ground there is no evidence to support it; in other words, ask the Court at this time to direct the jury to return a verdict against the defendant on the second plea, the special plea.

Thereupon, the motion was argued by counsel for plaintiff and counsel for defendant.

The Court: For better or for worse, I have to decide this sometime. I will grant the motion.

Mr. O'Leary: That is, that the verdict be against the defendant on the second plea?

The Court: Yes, so far as justification is concerned, I will grant it. I do not know as it is of any particular use to give my reasons about it. I think this bulletin #502 is an enforcement of the statute of the State of Maryland in regard to segregation, and not to be treated as a regulation of the railroad company adopted upon a consideration of the public interest as related to the alleged feeling of the community through which these trains passed, against the association of white people and colored people in the cars, and being an attempt to enforce a statute which is not applicable to defendants in interstate commerce; that it cannot effect the case. You may have the exception.

Mr. Littlepage: Your Honor will give us an exception.

The Court: Yes.

49 And thereupon the plaintiff to further maintain the issues upon his behalf joined gave testimony in rebuttal tending to prove that he had never in his life seen conductor Booth of the defendant company until he appeared upon the witness stand; that he was not the conductor of the train from which he was evicted; that he had never seen the witness Arth before he took the witness stand; that it did not thunder the night he was evicted from the car of the defendant company.

And thereupon to further maintain the issues on his behalf joined, the plaintiff called as witness in rebuttal WM. A. WALLER, who gave testimony tending to prove that he had never in his life seen conductor Booth until he appeared on the witness stand; and that he was not the conductor of the train from which witness was evicted; that he had never seen Arth until he had appeared upon the witness stand. That it did not thunder on the night he was evicted from the train.

And thereupon the plaintiff, to further maintain the issues joined on his behalf produced as witness in rebuttal WM. E. DONALDSON, who gave testimony proving that he was a clerk in the Weather Bureau of the United States Government, appeared as witness with the official reports of the Government with reference to the weather conditions on the night of August 6, 1917. That the territory embraced between Annapolis, Md., and the District of Columbia on the one hand, and Annapolis, Md., and Baltimore, Md., on the other hand is embraced by the following Weather Bureau stations: District of Columbia, Takoma Park, Laurel, Baltimore, and Annapolis. That the official weather report for that district did not show there was any thunder upon that night.

Cross-examination.

By Mr. Littlepage:

Q. Mr. Donaldson, that does not indicate that it might not have thundered down between Washington and Annapolis somewhere, does it? A. No, sir, it does not.

Q. It thunders many times when it does not rain. A. 50 Yes, sir. Thunder may be heard from a distant thunder storm.

Q. Thunder might be heard at one point and not be heard at another? A. Yes, sir.

Q. And also thunder might be heard at the stations but not recorded? A. At some of the stations, no, sir; not at Washington or Baltimore but at some of the other stations it may be.

And thereupon both parties announced their evidence closed; written prayers were submitted to the Court by counsel for both parties, and the following occurred.

The Court: It seems to me there is nothing left in this case except the question of damages, what is the use of making all these charges on behalf of the plaintiff. I have stricken out the testimony about a regulation. I have stricken out the testimony about the statute, substantially at any rate, and you have nothing here but the plea of not guilty which considers the mere question of eviction. There is no claim here unless there was a regulation of the company or a statute that would justify the eviction which was unlawful. Isn't the only question for the jury to consider the question of how much the plaintiff is entitled to recover by way of damages.

Mr. O'Leary: Well if that is the construction of your Honor that is the only question in the case, I will withdraw all my prayers.

The Court: What else is left? Maybe the defendant can discover something else in the case.

By Mr. Taliaferro: If your Honor please, we submit that under the general issue plea, the circumstances in this case may be considered by the jury as to whether or not the conduct of these men was such as to have justified their eviction—whether they
51 were smoking or putting their feet on the seats.

The Court: They were not put off because they were smoking or had their feet on the seats. Even admitting that they did—I do not say they did, but if they did have them there, there is no testimony when they were told to go back of the car that they were smoking or had their feet on *upon* the seat and that was not the reason.

Mr. Taliaferro: I think, if your Honor please, there was testimony by Booth that they were still smoking when they left the car, and our position is we did not put them off at all. We gave them the choice of obeying the rules of the company as to taking their feet off of the seat and smoking in the place provided for smokers, and they elected to leave the car. They said they wouldn't move anywhere; they would get off first.

The Court: You are quite right if the conductor undertook to tell the plaintiffs that they must keep their feet off the seats and stop smoking, and they, having their feet on the front seat and smoking, refused to obey that order, and he gave them the option either to obey the order or get off the train, or even said he would put them off the train if they did not. What is this, an action for an assault?

Mr. O'Leary: Yes, if your Honor please, assault and aggravated by being evicted from the train, and of course, the plaintiffs cannot conceive that would be possible under the general issue plea.

The Court: I guess I am wrong then. I had in mind the eviction and not the assault.

Mr. Taliaferro: If your Honor please, there is a direct conflict of testimony here. These men say they were not smoking and did not have their feet on the seat. We say they were. The testimony is they were. Those are matters which must be considered in order
52 to determine whether or not they are entitled to anything, so, we say it is not a question of how much they are entitled to, but the first inquiry is whether they are entitled to anything, and whether their conduct on this occasion warrants a verdict of damages, and then, if so, secondarily, how much.

The Court: I cannot take your view of it, Mr. Taliaferro. There is no proof in the case, I take it, that would warrant the jury in finding that the conductor was doing anything other than telling the witnesses to go to the rear of the car, that those seats were provided for colored people. Now, he said that himself. Consequently, I could not, even though the case were one for damages for being unlawfully ejected from the train, leave that question to the jury. I think there is not sufficient evidence there.

Now, unless I can see something else in the case, and I do not, I

am bound to tell the jury that this was an unlawful ejection and they should find for the plaintiffs such amounts as they think will fairly compensate them for the damages which they have suffered, including loss of business, if there had been any.

Mr. O'Leary: The plaintiff withdraws all its prayers under the circumstances.

Mr. Taliaferro: If your Honor please, just for the benefit of the record, we desire to renew all our objections and exceptions to your Honor's rulings, very respectfully, of course, and we would like for your Honor to pass upon those prayers of the defendant for the benefit of the record.

The Court: Yes, I will pass on yours.

I will overrule them all except as charged, and I will charge just as I have said.

The following being the prayers of the defendant, denied by the Court over objection and exception of the defendant.

Defendant's Prayer No. 1.

"The jury is instructed upon the whole case that they must return a verdict for the defendant."

Defendant's Prayer No. 2.

53 "The jury is instructed as a matter of law that the defendant as a common carrier had a right, prior to and at the time of the occurrence alleged in the declaration, to make and enforce rules and regulations governing the segregation in its trains of white and colored passengers traveling from one point to another within the state of Maryland, if by so doing the comfort and safety of passengers would be enhanced and better order maintained. They are further instructed as a matter of law that the defendant had at such times a right to apply to and enforce such rules against passengers en route from a point within the state of Maryland to within the District of Columbia, and traveling upon a through ticket, but who were riding upon a local intrastate train."

Defendant's Prayer No. 3.

"If the jury find from the evidence that the plaintiff violated the rules of the defendant company by smoking in that portion of the train where smoking was not permitted or by putting their feet upon the seats of the car, and refused to obey the directions of the conductor of the defendant's train to cease violating such rules, then they are instructed as a matter of law that the defendant had a right to eject the plaintiff from its train."

Defendant's Prayer No. 4.

"If the jury find from the evidence that the plaintiff refused to obey the directions of the conductor of the defendant's train to sit in that part of the car designated by the rules of the defendant for the accom-odation of colored passengers and as a consequence, either voluntarily left the train rather than take the seat designated for him, or was ejected from the train with no greater force than was necessary to accomplish that purpose, then they are instructed that the plaintiff can not recover and their verdict must be for the defendant."

Defendant's Prayer No. 7.

"The jury is instructed that the burden of proof is upon the plaintiff to establish that he was ejected unlawfully from the train, that the injuries of which he complains were the result of the ejection alleged in his declaration. He is not entitled to recover in this action for any injuries or for any loss of earnings which were not shown by a preponderance of the evidence he has suffered, nor which he was not shown by a like preponderance of the evidence were in fact caused by the unlawful ejectment for which he sues."

Mr. Littlepage: Will your Honor charge the jury on the minimum damages that they may find? That is, the question of compensation.

The Court: Did you ask me to make some charge on the award of damages?

Mr. O'Leary: There is no claim for punitive damages.

The Court: There is no claim here for anything except actual damages, and I will tell the jury in the first place if they find that they lost money as specified, that is one item, and then as
54 to all the other things, and the jury has got to use its own judgment as to what will fairly compensate these plaintiffs for any humiliation they were subjected to, any distress of mind due to the circumstances of the case, as they find them to be, and I do not know that there is anything else.

Mr. O'Leary: Physical pain and suffering.

The Court: Yes; physical pain and suffering, and the doctors' bill or the bill which was incurred or paid for those various lotions.

Mr. Littlepage: Of course, the jury has to take and decide for itself whether or not the plaintiffs were ejected from that car this side of that station or whether the facts are as testified to by the conductor and Arth as to the train having been stopped at the station.

The Court: The jury can do that without my telling them any-way. That is the way I look at it.

And thereupon, the case was argued to the jury by counsel for plaintiff and counsel for defendant, after which the following occurred:

The Court: I do not think I need say anything more to the jury.

Mr. O'Leary: I do not think so your Honor.

The Court: All right, you have heard what I have said about it, gentlemen, and just treat the case fairly, as you would treat every other case.

Be it further remembered that the foregoing fully sets forth all facts and the substance of all evidence given at the trial necessary to explain the bearing of the rulings by the trial court upon the issues or questions involved and rules upon; that to each of the rulings complained of, the attorneys for defendant, before the jury had retired to consider of its verdict, duly and severally made
55 exception and the same was noted upon the minutes of the trial justice; and that all of the foregoing which would not appear of record otherwise, may be made of record and so to appear in the record of the proceedings of the case, this bill of exceptions has been this fourteenth day of November, 1921, signed and sealed, to have the same force and effect as if each of said exceptions so noted as above, had been separately and severally set forth.

WALTER I. McCOY,
*Chief Justice, Supreme Court of
the District of Columbia.*

56 DEF'T'S EX. 2 FOR IDENTIFICATION, WITNESS BOOTH.

Washington, Baltimore & Annapolis Electric Railroad Company.

Bulletin No. 502.

To all conductors:

An act passed by the General Assembly of the State of Maryland in 1908 requires us to designate separate seats in our passenger coaches for white and colored passengers.

This law does not apply to what are known as Interstate passengers i. e. passengers traveling from the State of Maryland into the District of Columbia or vice versa. It does, however, apply to all passengers boarding and alighting from our trains at any points in the State of Maryland and our line operates in the State of Maryland from Baltimore to the District of Columbia line including the A. W. & B. Division.

Therefore, when you are in charge of trains which carry passengers to which this law applies, you will start loading colored passengers in the rear seats and white passengers in the forward seats.

On all passenger coaches this rule will apply in both the smoking and passenger compartments—and on combination coaches the same rule will apply in the passenger compartment, but in the smoking compartment where there are only four seats you will request the colored passengers to occupy one side of the smoking compartment and the white passengers the other side.

We wish to impress upon you the necessity of using extraordinary

precaution and good judgment in the handling of this situation and in the event of any questions of doubt arising in your mind as to the application of the law, before taking any action, consult the proper authority.

A complete copy of the law is attached for your full information and guidance.

CARSON SCHUMACHER,
Trainmaster.

N. A. Jct.
9-15-15.

57 *Laws of Maryland, January Session, 1908, Chapter #248.*

An act to authorize and require Conductors or Managers of all Railway Companies or Corporations, and all persons running or operating cars or coaches by electricity in the State of Maryland for the transportation of passengers, to designate separate seats for White and Colored passengers on all cars running Twenty (20) miles beyond the limits of any incorporated city or town in the state without any difference in the quality of or convenience or accommodation of the seats in such cars and coaches.

Section 1. Be it enacted by the General Assembly of Maryland, that Conductors of Managers of all Railway Companies and Corporations, and all persons running or operating cars or coaches by electricity running twenty (20) miles beyond the limits of any incorporated city or town of the state for the transportation of passengers, are hereby authorized and required to designate separate seats for White and Colored passengers, without any difference in the quality of or convenience or accommodation of the seats in such cars or coaches. The ordinary seat for two (2) persons shall be deemed a separate seat within the meaning of this act.

Section 2. And be it enacted, that the Railway Companies and Corporations and persons aforesaid shall make no discrimination in the quality of or convenience or accommodation in the seats in the cars, coaches or compartments, and no White person shall force himself or be permitted to force himself or herself in a seat designated for a Colored person, and no Colored person, shall force himself or herself, or be permitted to force himself or herself in a seat designated for a White person.

Section 3. And be it enacted, that the Conductors or Managers, or all Railways shall have power, and are hereby required to assign to each White or Colored person, his or her respective seat in said car, coach or compartment, and should any passenger refuse to occupy the seat to which he or she may be assigned by the Conductor or Manager, said Conductor or Manager shall have the right to refuse to carry such passenger on his car or coach, and may put such passenger off his car, or coach, and for such refusal or putting off the car or coach, neither the Conductor, Manager or Railway Company or Corporation, or person owning or operating the same, shall be liable for damages in any court and the passenger so refusing to occupy the designated seat to which he or she may be assigned, shall

be deemed guilty of a misdemeanor, and on indictment and conviction thereof, shall be fined not more than Fifty Dollars (\$50.00) or be confined in jail not more than Thirty Days (30), or both in the discretion of the court for each offense.

Section 4. And be it enacted, that any Conductor or Manager, on any Railway, who shall upon request, refuse to perform the duties imposed upon him by this Act, shall be deemed guilty of a misdemeanor, and upon indictment and conviction thereof, shall be fined not more than Twenty Dollars (\$20.00) for each offense.

Section 5. And be it enacted, that when the seats in any car, coach or compartment shall all be occupied, but not filled, and the increased number of passengers cannot be accommodated with separate seats, the Conductor or Manager in charge of such car or coach is hereby authorized to assign passengers of the same color to the vacant seats, and he can, with the permission and consent of the occupant, assign a passenger of the other color to the unoccupied seats, but not otherwise.

Section 6. And be it enacted, that the provisions of this Act shall not apply to persons employed as nurses or valets when accompanying those needing their attention.

Section 7. And be it enacted, that this Act shall take effect from the date of its passage.

AUSTIN L. CROTHERS, *Gov.*

Approved April 8th, 1908.

58 [Endorsed:] Law. No. 60828. Fred Brooks, Plaintiff, vs. Wash., Balto. & Annap. E. R. R. Co., Defendant. Bill of Exceptions. Law offices of Thomas P. Littlepage and Sidney F. Taliaferro, Union Trust Building, Washington, D. C.

Endorsed on cover: District of Columbia Supreme Court. No. 3758. Washington, Baltimore & Annapolis Electric Railroad Company, appellant, vs. Fred Brooks. Court of Appeals, District of Columbia. Filed Dec. 20, 1921. Henry W. Hodges, clerk.